

FILED
 UNITED STATES DISTRICT COURT
 ALBUQUERQUE, NEW MEXICO

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

DEC 31 2019

for the

36
 MITCHELL R. ELPERS
 CLERK

District of New Mexico

____ Division

Case No. 19cv1223 WJ KRS

(to be filled in by the Clerk's Office)

David Isaac GARCIA

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

c/o Alimon
 c/o John Doe
 LT. Chavira
 CPT. GARCIA

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name David Isaac Garcia
 All other names by which
 you have been known: _____
 ID Number 47110
 Current Institution Sandoval County Detention Center
 Address 1100 MONTROYA RD.
Bernillo NM 87004
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name ? Alimon
 Job or Title (*if known*) Correctional officer
 Shield Number ?
 Employer Central New Mexico Correctional Facility
 Address Po Drawer 1328
Los Lunas NM 87031
City State Zip Code
☒ Individual capacity ☒ Official capacity

Defendant No. 2

Name John Doe
 Job or Title (*if known*) correctional officer
 Shield Number Po Drawer 1328
 Employer Central New Mexico Correctional Facility
 Address Po Drawer 1328
Los Lunas NM 87031
City State Zip Code
☒ Individual capacity ☒ Official capacity

Defendant No. 3

Name

? chavira

Job or Title (if known)

LT.

Shield Number

?

Employer

Central New Mexico Correctional Facility

Address

PO Drawer 1328

los lunas

NM

87031

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 4

Name

? Garcia

Job or Title (if known)

Cpt.

Shield Number

Employer

Central New Mexico Correctional Facility

Address

PO Drawer 1328

los lunas

NM

87031

City

State

Zip Code



Individual capacity



Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

8th Amendment violation - By Assaulting me
"maliciously and sadistically" in order to cause harm.
THIS is cruel and unusual punishment.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

All defendants were employed by state of New Mexico.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☒ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

In Los Lunas, New Mexico on October 31, 2016.

C. What date and approximate time did the events giving rise to your claim(s) occur?

October 31, 2016. around 11:00 AM.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

cb alimon wrapped his arms around my neck AND slammed me down on my neck, upper back, lower skull area all while handcuffed behind my back. I was taken to medical, on the way Lt. Chavira stopped me to slam my head into a door, while allowing John Doe to nearly break my wrist. when returned to my cell I had a seizure and was taken to UNM hospital by ambulance. Capt. Garcia watch as all this happened. there were numerous cops who saw all of this. There is also video footage of the incident. I know because several cops told me they watched it.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

lost hearing in my ear, received a concussion, lost all taste in my mouth, have had migraine headaches since this incident.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I would like \$3,000,000 Dollars due to the pain and suffering medically AND the gross negligence of the individuals employed professionally by the state of New Mexico Department of Corrections. I would also like all defendants to receive proper sanctions for this assault.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Central New Mexico Correctional Facility

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Central New Mexico Correctional Facility - IB-Dpod

2. What did you claim in your grievance?

That I was assaulted by a c/o and Lt

3. What was the result, if any?

was told the grievance would be turned over to the office of professional conduct.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

yes the grievance process is completed.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes

☐ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) David Garcia

Defendant(s) CO chavira, CO allmon, Capt. Garcia, Josh doe.

2. Court (if federal court, name the district; if state court, name the county and State)

Federal

3. Docket or index number

1:16-cv-01407-WJ-SMV

4. Name of Judge assigned to your case

Vidmar

5. Approximate date of filing lawsuit

12-27-2016

6. Is the case still pending?

☐ Yes

☒ No

If no, give the approximate date of disposition.

6-15-2017

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

Dismissed without Prejudice

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment? NO

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☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 12-24-2019

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

David Garcia
David Garcia
47110
1100 Montoya Rd
Becinillio NM 87004
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City State Zip Code

Telephone Number

E-mail Address

David Garcia
1100 Montoya Rd
Bernillo, NM
87004

ALBUQUERQUE NM 87004

30 DEC 2019 PM 2 16



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UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

DEC 31 2019

MITCHELL R. ELPERS
CLERK

United States District Court
District of New Mexico

OFFICE of The Clerk

Suite 270

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Albuquerque NM

87102-227470

